UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Utah.
CENTERVILLE CITY, Plaintiff and Appellee,
v.
Sean K. BERNAT, Defendant and Appellant.
No. 20020639-CA.
Nov. 29, 2002.

Second District, Farmington Department; The Honorable Michael G. Allphin.
Benjamin A. Hamilton, Salt Lake City, for Appellant.
Michael D. Direda, Centerville, for Appellee.

Before Judges BILLINGS, BENCH, and THORNE.

MEMORANDUM DECISION (Not For Official Publication)

PER CURIAM:
*1 Appellant Sean Bernat appeals his conviction of alcohol related reckless driving, a class B misdemeanor, which resulted from a trial de novo in the district court following a conviction in Centerville Justice Court. This case is before the court on a sua sponte motion for summary dismissal on the basis that this court lacks jurisdiction over an appeal following a trial de novo "unless the district court rules on the constitutionality of a statute or ordinance." Utah Code Ann. § 78-5-120(7) (Supp.2002).
This appeal is one of several filed by Bernat's counsel seeking to appeal the district court's ruling on the constitutionality of rule 4-608 of the Utah Rules of Judicial Administration. [FN1] The right to appeal a decision of the district court following a trial de novo is limited by statute. *See* Utah Code Ann. § 78-5-120(7) ("The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or

ordinance."). In similarly situated appeals seeking review of a district court's denial of a constitutional challenge to rule 4-608(2)(c), this court held that when an appellant "challenges the constitutionality of a rule, rather than a statute or ordinance as specified under the statute, this court is without jurisdiction over the appeal." *State v. Beuchert,* 2002 UT App 266 (per curiam); *Murray City v. Serre,* 2002 UT App 264 (per curiam); *Murray City v. Kvenvold,* 2002 UT App 263 (per curiam). Bernat's collateral challenge to the jurisdictional holding in those decisions is both procedurally inappropriate and without merit . [FN2]

FN1. Counsel's representation that a conditional guilty plea was entered under *State v. Sery,* 738 P.2d 935 (Utah Ct.App.1988), is unsupported by any record evidence that the *Sery* requirements were satisfied. *See State v. Bobo,* 803 P.2d 1268, 1271 (Utah Ct . App.1990) (stating appellant bears burden to demonstrate conditional nature of plea is "unambiguously established" in record). The fact that the sentence was stayed pending appeal is not sufficient evidence of a *Sery* plea. *See id.*

FN2. The proper means to challenge a decision of this court is a timely petition for writ of certiorari. *See* Utah R.App. P. 48.

In response to the sua sponte motion, Bernat suggests that the operation of rule 4-608 in conjunction with section 78-5-120 unconstitutionally limits his right to appeal. [FN3] However, the motion Bernat filed in district court sought only a ruling on the constitutionality of rule 4-608(2)(c) of the Utah Rules of Judicial Administration, that requires a certificate of probable cause, as provided in the Utah Rules of Criminal Procedure, to stay a sentence from justice court pending the appeal, in the form of a trial de novo, in district court. The district court did not rule on the constitutionality of any

statute or ordinance when it denied Bernat's motion. Consequently, this court lacks jurisdiction over the appeal under section 78-5-120(7). This case is not distinguishable from *Beuchert, Serre,* and *Kvenvold.*

FN3. A means to seek review of issues not encompassed within our statutory jurisdiction under Utah Code Ann. § 78-5-120(7) would be through a petition for extraordinary relief. *See Dean v. Henriod,* 1999 UT App 50, ¶ 8, 975 P.2d 946.

Bernat urges this court to certify his appeal to the Utah Supreme Court rather than dismissing it. "When a matter is outside the court's jurisdiction, it retains only the authority to dismiss the action." *Varian-Eimac v. Lamoreaux,* 767 P.2d 569, 570 (Utah Ct .App.1989).
Accordingly, we grant the sua sponte motion and dismiss the appeal for lack of jurisdiction.
Utah App.,2002.
Centerville City v. Bernat
2002 WL 31670359 (Utah App.), 2002 UT App 394
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